

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TROY MAGARRELL,

Plaintiff,

No. CIV S-04-2634 LKK DAD P

vs.

P. MANGIS, M.D., et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

By order filed November 21, 2005, plaintiff's newly substituted counsel was directed to file a notice concerning his intention to proceed on the pro se complaint filed December 13, 2004, or to amend. Plaintiff was granted fifteen days for this purpose. No notice or other response was filed. Defendant Roche has now filed an answer to the pro se complaint. Plaintiff may amend only by filing a motion for leave to amend, accompanied by a proposed amended complaint. On the basis of plaintiff's failure to respond to the November 21, 2005 order, the court will recommend that the two unserved defendants be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's claims against defendants P. Mangis, M.D., and Richard Sandham, M.D., be dismissed from this action without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

1           These findings and recommendations will be submitted to the United States  
2 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
3 ten days after being served with these findings and recommendations, plaintiff may file and serve  
4 written objections with the court. Failure to file objections within the specified time may, under  
5 certain circumstances, waive the right to appeal the District Court's order. See Martinez v. Ylst,  
6 951 F.2d 1153 (9th Cir. 1991).

7 DATED: December 12, 2005.

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10 DALE A. DROZD  
11 UNITED STATES MAGISTRATE JUDGE

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